

SARA: Understanding the Gaps

NASASPS Annual Conference 2016

© 2016 Cooley LLP. All rights reserved. Cooley LLP is a registered trademark of Cooley LLP. Cooley LLP is a registered trademark of Cooley LLP. Cooley LLP is a registered trademark of Cooley LLP.

---

---

---

---


---

---

---

---

Presenters



Greg Ferenbach  
Cooley LLP

Alan Contreras  
SARA Coordinator, NC-SARA

Brianna Bates  
Assistant Director, Academic Program Review, NYU

Jeannie Yockey-Fine  
Cooley LLP

2 [www.cooley.com](http://www.cooley.com)

---

---

---

---


---

---

---

---

SARA—Understanding the Gaps



- ▶ Thoughts from outside counsel, a former regulator, current professional licensing board member, and SARA Coordinator
- ▶ An institution's perspective: NYU's approach
- ▶ **Goals:**
  - ▶ Understanding the SARA gaps, including international issues
  - ▶ Advice in maintaining compliance
  - ▶ Understanding the federal overlay

3 [www.cooley.com](http://www.cooley.com)

---

---

---

---

---

---

---

---

SARA does not apply to:

- ▶ Non-degree granting institutions
- ▶ Non-accredited institutions
- ▶ Professional licensing board requirements for programs leading to licensure, such as:
  - Nursing
  - Teacher certification, educational leadership
  - Social work
  - Psychology and counseling
  - Allied Health

---

---

---

---

---

---

---

---

- ▶ State authorization may still be required for “alternative providers” such as MOOC’s, “boot camps,” participants in the federal EQUIP experiment, etc.
- ▶ Unless such programs are offered through an accredited, degree-granting institution
- ▶ Alternative providers may be able to claim exemptions, depending on state law.
- ▶ NB: important consequence of SARA is that many more states require authorization for purely online programs not covered by SARA.

---

---

---

---

---

---

---

---

- |             |                 |
|-------------|-----------------|
| ▶ Alabama   | ▶ Nebraska      |
| ▶ Alaska*   | ▶ New Hampshire |
| ▶ DC        | ▶ Oklahoma      |
| ▶ Delaware  | ▶ Puerto Rico   |
| ▶ Georgia   | ▶ Rhode Island  |
| ▶ Idaho     | ▶ Texas         |
| ▶ Illinois* | ▶ Utah*         |
| ▶ Iowa      | ▶ Wisconsin     |
| ▶ Kansas    | ▶ Wyoming       |
| ▶ Montana   |                 |

\*Purely online degree institutions are exempt, but must apply for an exemption

---

---

---

---

---

---

---

---

## Professional Licensure

- ▶ Professional licensing board requirements are separate from state authorization rules.
- ▶ Some state higher education authorizing agencies will not approve a program until a licensing board also approves the program.
- ▶ This leads to difficult situations, including lawsuits, if a student graduates and then cannot actually get licensed (all too common in fields requiring professional licensure—Nursing, Education, Medicine, Psychology)
- ▶ Federal misrepresentation and accreditor sanctions also apply.

---

---

---

---

---

---

---

---

## Professional Licensure

- ▶ Licensing board requirements vary greatly from state to state:
  - ▶ May mandate specific professional accreditations
  - ▶ Field experience – number of hours and sites
  - ▶ Professional examinations
  - ▶ Some boards will not approve online programs at all
  - ▶ Some states will not allow initial professional license if from another state
  - ▶ Certain states will not allow a transfer of a license unless additional state requirements are met (no reciprocity)

---

---

---

---

---

---

---

---

## International Issues

- ▶ Courses offered by a non-U.S. institution or from a physical site outside the U.S. or its territories are not eligible for the benefits of SARA.
- ▶ International institutions need to address state requirements or partner with U.S. institutions.
- ▶ Conversely, institutions offering programs abroad need to consider requirements of those other countries.
- ▶ In general, “pure” online programs do not require licensure abroad but physical locations do.
- ▶ Other international requirements vary (tax, privacy etc.)

---

---

---

---

---

---

---

---

Minding the Gaps—NYU's Experience

- ▶ Don't delay; get started
- ▶ How to organize and understand what the gaps are
- ▶ Create a plan to close the gaps
- ▶ How NYU manages the gaps
- ▶ Secret to success: be proactive, not reactive

---

---

---

---

---

---

---

---

Federal Compliance—Distance Education

- ▶ Federal distance education rule (34 CFR § 600.9(c)) was thrown out on procedural grounds in APSCU v. Duncan in 2011 (affirmed on appeal in 2012).
- ▶ Negotiated rulemaking ended in 2014 with a complete failure to reach consensus.
- ▶ ED then "paused" the formal rulemaking process.
- ▶ Appears likely that ED may not proceed at all.
- ▶ Possible this issue may re-surface in the HEA process.
- ▶ Good news is: ED appears to accept SARA participation as evidence of authorization.

---

---

---

---

---

---

---

---

Federal Compliance—Distance Education

- ▶ Bad news is: ED staff believes state authorization for distance education is still required under the HEA.
  - ▶ "[I]nstitutions continue to be responsible for complying with all State laws as they relate to distance education." DCL GEN-12-13 (Jul. 27, 2012).
- ▶ Curiously, the vacated rule is still in the Code of Federal Regulations!
- ▶ Issue comes up in re-certification process, particularly with for-profits.
- ▶ Remember: State authorization is a condition to Title IV eligibility.

---

---

---

---

---

---

---

---

Other Federal Compliance Requirements (Not Impacted by SARA)



▶ **Student Disclosure Rules**

- ▶ Section 668.43(b) – All institutions must disclose to all students, or prospective students, the complaint agency in all states where students reside.
- ▶ NB– must also make all state approval documents available “on request” to your students (auditable by ED)
- ▶ Complaint agencies should be posted on your website. See DCL GEN-12-13.

▶ **Federal Misrepresentation Rules**

- ▶ Exceptionally broad and vague rules ban any form of “substantial misrepresentation.”
- ▶ Rule mostly upheld by Court of Appeals in 2012.

---

---

---

---

---

---

---

---

Other Federal Compliance Requirements (Not Impacted by SARA)



▶ **Federal Misrepresentation Rules (continued)**

- ▶ Rule specifically references misstatements as to state authorization or accreditation of a program. 34 CFR § 668.72.
- ▶ Some accreditors/states have added new misrep requirements
- ▶ State AG’s and FTC are now very active.
- ▶ Their activities can be used as a basis for ED sanctions that include possible loss of Title IV!
- ▶ Disclosure of any state and programmatic authorizations must be 100% accurate.

---

---

---

---

---

---

---

---

Other Federal Compliance Requirements (Not Impacted by SARA)



▶ **Gainful Employment regulations** (34 C.F.R. § 668.414(d)):

- ▶ Require institutions to certify that professional licensure programs (that are also gainful employment programs) prepare students to obtain professional license in each state the institution is required to be authorized in under 34 CFR 600.9.
- ▶ Presumably does not apply to purely distance education programs, but what if it has on-ground component?
- ▶ Regulations also direct ED to develop a student disclosure template as to whether programs lead to licensure in the relevant states. (Institutions will be required to use the new disclosure template beginning January 1, 2017).

---

---

---

---

---

---

---

---

- ▶ Proposed “defense to repayment” regulations—to come in 2016 after recent failed Neg reg.
- ▶ Proposed rules pushed hard by State AG’s and student advocacy groups; apply to any institution.
- ▶ May provide that virtually any alleged misconduct or misrep by institutions under state law may entitle students to tuition refunds, to ED recourse against schools and/or result in heightened oversight or sanctions.
- ▶ Bottom line: SARA alone is not a state compliance program.

---

---

---

---

---

---

---

---